

1905-049 Chancery Causes: James Smith & vs. John M. Hoen  
Lee Co.

Robbins

CA-Contract Dispute  
T-Property



To the Hon. H. A. W. Skeen, Judge of the Circuit Court  
for Lee County, Virginia.

Humbly complaining your orator, James Smith, and your or-  
atrices Charlotte Smith and Mary Robbins, would show unto the court;  
that on the 19th day of March, 1903, they entered into a contract  
with one John M. Hoen of New York City, wherein your orator and  
oratrices agreed to sell and convey unto the said John M. Hoen, at  
the price of \$20.00 per acre, \$100. of the purchase price thereof  
paid in hand, the balance of the purchase money to be paid, one-third  
when the survey of the land hereinafter mentioned was completed, one-  
third when the title thereto was perfected, the remainder to be paid  
within four months from the date of the said contract with interest  
from date, the following described tract or parcel of land, to-wit:  
A certain tract or parcel of land lying and being in Lee County, of  
Virginia, on the waters of Jones' Creek on the North Fork of Powell's  
River, and bounded on the north by the land of Mary A. Kelly, on the  
east by the lands of Henry Hoyer and William R. Robbins, on the south  
by the lands of A. D. Robbins, and on the West by the lands of Rodah  
D. Smith, and containing sixty acres more or less, and being the land  
on which your orator and oratrices are living, and being the land  
deeded to the said Charlotte Smith by the heirs of A. D. Robbins,  
deceased. The expense of surveying the said tract of land was to be  
bourn equally by your orator and oratrices and the said John M.  
Hoen, and the said John M. Hoen agreed to take and pay for the said  
land at the afore mentioned price, and further bound himself to com-  
plete the said survey within four months from the date of the contract.  
That the payment of the \$100.00, hereinbefore mentioned was to be a  
credit upon the land upon the <sup>price</sup> purchase if the said John M. Hoen,  
or his assigns declare himself or themselves in readiness to pay the  
balance of the purchase money in accordance with the time and dates  
for such payment, and upon an execution and delivery to the said



(2)

party of a deed of general warranty for said land. It is further provided in said contract that should said John M. Hoen fail to pay upon tender of a deed for said land by said first party in accordance with the time and dates of the payment above mentioned, then the said payment of \$100.00 was to be forfeited to your orator and oratrices. It is further agreed that your orator and oratrices was to hold the said land for agricultural purposes during the said year of 1903, a copy of which contract is herewith filed marked "Exhibit A" to be *the original being in the possession of said Hoen can not be produced by Deft.* read and treated as a part of this bill. Your orator and oratrices will now show unto your honor, that they have fully complied with every provision of this contract themselves, and have been ready at all times to execute and deliver unto the said John M. Hoen, or his assigns, a good and sufficient deed, with covenants of general warranty for said land, free from all encumbrances what ever; that the said land was surveyed in accordance with the provisions of said contract, but that the said John M. Hoen has taken no further steps to complete his purchase of said land, that he has made no further payment thereon other than the \$100.00 hereinbefore mentioned, and his place of residence is no longer known to your orator and oratrices, and he has apparently to all purposes and effect abandoned the contract, and does not wish to carry it into completion. Your orator and oratrices herewith file a deed to said land unto the said John M/ Hoen to be delivered upon the completion of said contract, and the payment of said purchase money at the price of \$20.00 per acre. Your orator and oratrices believe and are informed that they have a right to treat the said contract as abandoned on the part of the said John M. Hoen, but are advised that the contract which is in writing, a copy of which has been herein filed marked "Exhibit A" constitutes a cloud upon the title to said land, and are advised that they should apply to this court to have said contract rescinded, annulled or set aside.

The prayer of your orator and oratrices is, therefore, that the said John M. Hoen be made a party defendant to this suit; that he



(3)

be required to answer the same, but not upon oath, that being expressly waived, and that the contract hereinbefore mentioned be rescinded, annulled and set aside and declared void. Or if your orator and oratrices are wrong in this, and if the said contract can not be set aside and annulled and declared void, then that the said land be sold for the residue of the purchase money due your orator and oratrices; and that all such other further and general relief be granted your orator and oratrices as the justice of the cause may demand and they will ever pray &c.

*Or & Kael. p. g.*



James Smith et al.  
vs { Bill in Chy.  
{  
John H. Doerr.

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1905 1<sup>st</sup> May Rules  
Bill filed and con-  
tinued for O.P.  
" 2<sup>nd</sup> May Rules  
O.P. completed &  
cause set for hear-  
ing.

Costs:  
Clerk \$6.15-  
Atty 15.00  
Printer 5.80  
\$26.95



James Smith, Charlotte Smith and Mary Robbins,

Plaintiffs.

vs.

In Chancery

John M. Hoen,

Defendant.

This cause came on to be heard upon the bill of the plaintiff, and exhibits therewith, the order of publication duly made posted and published against the defendant, and the cause regularly matured at rules and set for hearing by the plaintiff, and was argued by counsel.

On consideration thereof, and the defendant failing to appear, plead, demur or answer the bill ~~is~~ taken for confessed against him. And the court being of opinion that the defendant <sup>with</sup> has failed to comply <sup>in the bill mentioned</sup> and perform the contract with the plaintiff, and that the plaintiff ~~having~~ a right to treat the said contract as abandoned by the defendant, it is adjudged, ordered and decreed, that the said contract set forth in exhibit "A" be cancelled, set aside and annulled, and the cloud upon the titled of the plaintiff ~~to~~ the land in the bill mentioned caused by said contract, be and is hereby removed, and that the plaintiffs be quieted in their possession if said land so far as the defendant ~~s~~ is concerned, and that they recover from the said defendant their cost in this behalf expended, and the cause is stricken from the docket.



James Smith et al  
vs Decree Final  
John M. Deen.

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Entered in C. C. B.  
No. 8 - p. 44.

Enter this decree.  
~~James Deen~~

May 22 / 1905.



KNOW ALL MEN by these presents that we, Charlotte  
and James Smith  
Smith, her husband, and Mary Robbins, of the County of Lee,  
State of Virginia, parties of the first part, and John M. Hoen,  
of New York City, party of the second part:

WITNESSETH; That for and in consideration of \$20.00,  
per acre, purchased price for the hereinafter described property,  
of which purchase price the sum of \$100.00 is paid in hand,  
the receipt of which is hereby acknowledged, and the balance where-  
of to be paid one-third when survey thereof are completed, one-  
third when titles thereto are perfected, and the remainder within  
four months from date, with interest from date, the said first  
parties have this day sold and bind themselves to convey, with  
covenants of general warranty, free from all incumbrances, to the  
aforesaid John M. Hoen, party of the second part, or his assigns,  
a certain tract or parcel of land lying and being in Lee County,  
Virginia, lying on the waters of Jones Creek of North Fork of Pow-  
ell's River, and bounded and described as follows, to-wit:  
Bounded on the North by the lands of Mary A. Kelly, on the East  
by the lands of Henry Hoover, and W. R. Robbins, on the South  
by the lands of A.D. Robbins, and on the West by the lands of  
Rhoda D. Smith, and containing sixty acres more or less. Being  
the land the said first parties now live upon, and being the  
land deeded the said Charlotte Smith by the heirs of A. D.  
Robbins, deceased.

The expense of surveying is to be borne equally by the  
parties of the first part and the party of the second part, and  
the expense of the abstract of title is to be borne by the second  
party.

The aforesaid second party binds himself, or his assigns  
to take and pay for the said land at the afore mentioned price,  
and binds himself to complete survey within four months from this  
date.

The aforesaid first payment is to be a credit on the  
land so purchased, if the party of the second part, or his assigns  
declare himself or themselves in readiness to pay the balance  
of the purchase money in accordance with the times or dates for  
such payments, and upon the execution and delivery to the said



2/

second party of a deed of general warranty for said land. Should the said second party fail to pay, upon tender of deed to said land by said first party, in accordance with the time or dates of payment, above mentioned, then this first payment is forfeited to said first party.

The said first party is to have the benefit of said land for agricultural purposes during this year, but not in any way to interfere with said second party in entering upon and developing the same.

WITNESS the following signatures and seals, this 19th, day of March, 1903.

Charlotte Smith, (seal)

James Smith (seal)

Mary Robbins (seal)



Charlotte Smith <sup>et</sup>  
-als

with } Contract. -  
- Copy.  
John M. Allen.

A.



IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF LEE ON  
THE 11TH DAY OF APRIL, 1905.

Charlotte Smith et al	Plaintiffs.	)	
		)	
against		)	In Chancery.
		)	
John M. Hoen	Defendant	)	

The object of this suit is to have a specific execution of the contract of sale of the tract of land in the bill mentioned by the plaintiffs to defendant, or to have said contract declared null and void.

And an affidavit having been made and filed that the defendant, John M. Hoen is not a resident of the State of Virginia, it is ordered that he do appear here within 15 days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy be published once a week for four weeks in the Jonesville Star, and that a copy be posted at the front door of the Court-house of this County, as prescribed by law.

A copy-- Teste:

J. C. Ewing Clerk.

Orr & Noel p.q.



Charlotte Smith et al

vs. ) ORDER OF PUBLICATION

John M. Horn

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Virginia, Lee County, to-wit:

I, H. C. T. Ewing, Clerk of the  
Circuit Court for the County aforesaid  
in the State of Virginia, do cer-  
tify that I posted a true copy  
of the within order of publication  
at the front door of the Court-house,  
on this the 11th day of April, 1905.

Given under my hand this the 11th  
day of April, 1905.

H. C. T. Ewing Clerk.



In the Clerk's Office of the Circuit Court of the County of  
Lee

Charlotte Smith et al

Plaintiff S,

against

John M. Horn

Defendant .

This day J. C. Noel personally appeared  
before me H. C. Ewing Clerk of the said Court,  
and being duly sworn, made oath that John M. Horn

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 10<sup>th</sup> day of April 1905.

H. C. Ewing Clerk



Charlotte Smith et al

vs.

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AFFIDAVIT FOR ORDER

OF

PUBLICATION.

John M. Horne -

Or & No 6 p. q.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*John M. Horn*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on  
the *1st* Monday in *May*, 190*5*, to answer a bill in chancery exhibited against *him*

*in our said Court by Charlotte Smith,  
James Smith, and Mary Robbins.*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *11th*  
day of *April*, 190*5*, and the *29th* year of the Commonwealth.

A Copy, Teste:

*H. C. T. Ewing*, Clerk.

\_\_\_\_\_, Clerk.



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Charlotte Smith, et al

VS

}

SUBPOENA  
IN  
CHANCERY.

John M. Horne

Or & Norb. p. q

To

1<sup>st</sup> May

Rules.

Les Circuit

Court.

17905



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-  
2  
ORDER OF PUBLICATION

In the Clerk's office of the Circuit Court  
of the county of Lee on the 11th day of  
April, 1905.

CHARLOTTE SMITH, et al., Plaintiffs,  
vs.

JOHN M. HOEN, Defendant.

In Chancery

3 The object of this suit is to have a spe-  
3 cific execution of the contract of sale of  
2 the tract of land in the bill mentioned by  
7 the plaintiffs to defendant, or to have said  
5 contract declared null and void. And an  
0 affidavit having been made and filed that  
0 the defendant, John M. Hoen, is not a res-  
ident of the State of Virginia, it is ordered  
r that he do appear here within  
fifteen days afterdue publica-  
s tion hereof and do what may be necessary  
to protect his interest in this suit. And it is  
urther or dered that a copy hereof be pub-  
t lished once o week for four weeks  
n in the Jonesville Star and that a  
copy be posted at the front door of the  
court-house of this county as prescribed  
by law.

A copy-Teste:

H. C. T. EWING, Clerk

ORR & NOEL, p. q.



Charlotte Smith

vs

vs { Am Chancery  
John M. Stevens



I, J. C. Bontigle, editor

of The Jonesville Star, a weekly newspaper  
published in the county of Lee, state of Virginia,  
do hereby certify that the enclosed notice was  
published in said paper once a week for four  
successive weeks, commencing on the 13  
day of April 1906

J. C. Bontigle, Editor.

FEE \$

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J. H. Orr for Diff.